

**148.859 Agreement between authority and approved company.**

- (1) The authority, upon adoption of its final approval, may enter into with any approved company an agreement with respect to its tourism attraction project. The terms and provisions of each agreement shall include, but not be limited to:
    - (a) The amount of approved costs, which shall be determined by negotiations between the authority and the approved company. Any increase in approved costs incurred by the approved company and agreed to by the authority shall apply retroactively for purposes of calculating the carry forward for unused inducements as set forth in KRS 139.536(3) and (4) for tax years commencing on or after July 1, 2004;
    - (b) A date certain by which the approved company shall have completed the tourism attraction project. Upon request from any approved company that has received final approval prior to or after July 15, 2000, the authority shall grant an extension or change, which in no event shall exceed three (3) years from the date of final approval, to the completion date as specified in the agreement of an approved company. Within three (3) months of the completion date, the approved company shall document the actual cost of the project through a certification of the costs to be provided by an independent certified public accountant acceptable to the authority;
    - (c) The following provisions:
      1. For all tourism attraction projects except a tourism attraction project identified in subparagraph 2. of this paragraph, the term shall be ten (10) years from the later of:
        - a. The date of the final approval of the project; or
        - b. The original completion date specified in the agreement, if this completion date is within three (3) years of the date of the final approval of the project. An extension of the original completion date shall not alter the commencement date of the term;
      2. For a tourism attraction project that includes a facility, including but not limited to a lodging facility or shrine:
        - a.
          - i. Located on property owned by the Commonwealth, or leased by the Commonwealth from the federal government; and
          - ii. Acquired for use in the state park system pursuant to the provisions of KRS 148.028, and operated by the Kentucky Department of Parks pursuant to the provisions of KRS 148.021; or the Kentucky Horse Park Commission pursuant to the provision of KRS 148.258 to 148.320; or
        - b. Located on property owned or leased by the federal government and identified as a national park;
- the term shall be twenty (20) years from the later of the date of the final approval of the project, or the original completion date specified in the agreement, if this completion date is within three (3) years of the date of

the final approval of the project. An extension of the original completion date shall not alter the commencement date of the term;

3. Within forty-five (45) days after the end of each fiscal year of the approved company, during the term of the agreement, the approved company shall supply the authority with such reports and certifications as the authority may request demonstrating to the satisfaction of the authority that the approved company is in compliance with the provisions of KRS 139.536 and KRS 148.851 to 148.860. Based upon a review of these materials and other documents that may be made available, the authority shall then certify to the Department of Revenue that the approved company is in compliance with this section; and
  4. The approved company shall not receive a sales tax refund as prescribed by KRS 139.536 with respect to any fiscal year if:
    - a. In any year following the fourth year of the agreement, the tourism attraction project fails to attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth, except for a theme restaurant destination attraction, which shall attract a minimum of fifty percent (50%) of its visitors from among persons who are not residents of the Commonwealth; or
    - b. In any year following the first year of the agreement, the tourism attraction project is not operating and open to the public for at least one hundred (100) days; and
- (d) Upon request from an approved company that has completed at least fifty percent (50%) of an entertainment destination center, the authority shall grant an extension of up to three (3) years to the completion date specified in the agreement of the approved company, in addition to the extension provided for in paragraph (b) of this subsection. In no event shall the completion date be more than six (6) years from the date of final approval. The extension provided for in this paragraph shall be subject to the following conditions:
1. The approved company shall have spent or have contractually obligated to spend an amount equal to or greater than the amount of approved costs set forth in the initial agreement;
  2. The term of the agreement shall not be extended; and
  3. The scope of the entertainment destination center, as set forth in the initial agreement, shall not be altered to include new or additional entertainment and leisure options.
- (2) The agreement shall not be transferable or assignable by the approved company without the written consent of the authority.
- (3) In consideration of the execution of the agreement as defined in KRS 148.851 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 148.851 excluding its lessees, may be granted a sales tax refund under KRS 139.536 from the Kentucky sales tax imposed by KRS

139.200 on the sales generated by or arising at the tourism attraction project as defined in KRS 148.851.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 85, sec. 565, effective June 20, 2005; ch. 184, sec. 16, effective June 20, 2005; and ch. 173, Pt. XXIV, sec. 2, effective March 20, 2005. -- Amended 2003 Ky. Acts ch. 73, sec. 5, effective March 18, 2003. -- Repealed, reenacted, and amended 2001 Ky. Acts ch. 1, sec. 6, effective June 21, 2001. -- Amended 2000 Ky. Acts ch. 300, sec. 24, effective July 14, 2000; and ch. 315, sec. 1, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 238, sec. 4, effective April 1, 1998. -- Created 1996 Ky. Acts ch. 335, sec. 5, effective July 15, 1996.

**Legislative Research Commission Note** (6/20/2005). This section was amended by 2005 Ky. Acts chs. 85, 173, and 184, which do not appear to be in conflict and have been codified together.

**Legislative Research Commission Note** (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

**Legislative Research Commission Note** (6/21/2001). This is former KRS 154.29-010 as amended by 2001 Ky. Acts ch. 1, sec. 2, and renumbered by the Reviser of Statutes under KRS 7.136(1).

**Formerly codified as** KRS 154.29-050.